IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

LETTERS PATENT APPEAL No. 1511 of 2006
In
SPECIAL CIVIL APPLICATION No. 24709 of 2006

For Approval and Signature:

HONOURABLE MR.JUSTICE A.M.KAPADIA

HONOURABLE MR.JUSTICE K.A.PUJ

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1	Whether Reporters of Local Papers may be allowed to see the judgment ?
2	To be referred to the Reporter or not ?
3	Whether their Lordships wish to see the fair copy of the judgment ?
4	Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?
5	Whether it is to be circulated to the civil judge ?

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PADMABEN NATVARLAL DESAI WIDOW OF N.D.DESAI - Appellant
Versus
STATE OF GUJARAT & 1 - Respondents

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Appearance :
MR PARESH UPADHYAY for Appellants.
MR APURVA DAVE, AGP for Respondents.

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CORAM :	HONOURABLE MR.JUSTICE A.M.KAPADIA
	and
	HONOURABLE MR.JUSTICE K.A.PUJ

Date : 20/06/2007
ORAL JUDGMENT
(Per : HONOURABLE MR.JUSTICE K.A.PUJ)

1. The appellant – original petitioner has filed this appeal under Clause 15 of the Letters Patent challenging the order dated 29.11.2006 passed by the Learned Single Judge in Special Civil Application No.24709 of 2006 whereby the Learned Single Judge has disposed of the petition directing the respondents to consider the representation made by the petitioner dated 25.07.2006 and to pass appropriate reasoned order within a period of one month from the date of receipt of the copy of the said order and to communicate the same to the petitioner. The Learned Single Judge has also observed in the order that the Court was not entertaining the said petition because of details such as statutory rules or GR on which claim of medical reimbursement is based, were not supplied by learned advocate and that the petitioner has not established his legal right to claim full amount of medical reimbursement. The Learned Single Judge has

further observed that demanding details from the State Government that on what basis the amount of claim is reduced is a converse conduct of the petitioner through his advocate and hence, the Court was not entertaining the petition only on that ground.

2. This Court has admitted the petition on 11.04.2007. In Civil Application for stay, this Court, after hearing learned advocates appearing for the respective parties, passed a detailed order on 11.04.2007. The Court has considered the fact that the appellant was 90 years old and as against the expenses incurred by the applicant to the tune of Rs.91,730/- on account of his medical treatment, only Rs.11,746/- were sanctioned by the opponents and that too after the appeal was admitted by this Court. The Court has also taken note of the fact that the impugned order of the Learned Single Judge as well as the sanctioned order issued by the opponents are contrary to the judgment of the Hon'ble Supreme Court as well as this Court. The Court has considered the decision of the Hon'ble Supreme Court in the case of The Comptroller & Auditor General of India, Gian Prakash, New Delhi and another V/s. K. S. Jagannathan and

another, AIR 1987 S.C. 537 as well as the judgment of this Court in the case of Bharatkumar H. Pathak V/s. State of Gujarat, (2003) 2 G.H.J. 994. The Court has also considered the submissions made by Mr. Apurva Dave, learned Assistant Government Pleader on behalf of the opponents to the effect that as per the rules, the amount was sanctioned and hence, no interference is called for in the judgment and order of the Learned Single Judge. The Court thereafter took the view that the amount sanctioned by the opponents is too low and contrary to the reported judgments. The Court, therefore, granted interim relief in terms of paragraph 5 (A) of the Civil Application whereby judgment and order passed by the Learned Single Judge dated 29.11.2006 was stayed. As far as prayer made in paragraph (B) was concerned, the Court observed that interest of justice would better be served, looking to the age of the appellant, if on account payment of 50% of the claim amount is ordered to be made to the appellant, during the pendency of the appeal. The Court, therefore, while disposing of the said Civil Application, directed the respondent authorities to make on account payment of 50% of Rs.91,750/-, rounded of Rs.45,000/- towards the

medical reimbursement of the appellant forthwith which was made subject to the outcome of the main Letters Patent Appeal.

3. During pendency of the present appeal, appellant Mr. Natvarlal Dahyabhai Desai expired on 12.05.2007. Hence, his wife, namely, Padmaben Natbvarlal Desai has filed Civil Application No.7918 of 2007 to be joined as legal representative of the deceased appellant. This Court, vide order dated 19.06.2007, allowed the said Civil Application and the applicant was permitted to be joined as legal representative of the deceased appellant.

4. The Court has also passed order in the Letters Patent Appeal on 19.06.2007 and observed that despite the order passed by this Court on 08.05.2007, the amount ordered to be released has not been released by the respondents and the appellant expired on 12.05.2007. Mr. Upadhyay has submitted that though the appellant has died with satisfaction that the stigma attached was removed, however, he has not seen the colour of money during his life time. The Court, therefore, observed that the respondent authorities have acted in violation of

order dated 08.05.2007 and despite the fact that the order was passed to release the amount forthwith, even till this date and even after the death of the appellant, the amount has not been paid to the legal representative of the deceased employee. The Court, therefore, directed the Principal Secretary, Health & Family Welfare Department, New Sachivalaya Complex, Gandhinagar to personally remain present before this Court today i.e. 20.06.2007 to explain as to why the order dated 08.05.2007 passed by this Court has not been complied with so far. The Court has also made clear that if the Principal Secretary, Health & Family Welfare Department did not remain present before this Court, action would be taken against her.

5. Pursuant to the aforesaid order, the Principal Secretary, Health & Family Welfare Department, namely, Ms. Rita Divetiya remained personally present before the Court and she has submitted that there is no question of non-compliance of the Court's order. As a matter of fact, the amount has already been sanctioned on 14.05.2007 and the matter was sent to the Finance Department for release of the amount. There was no delay on her part

as intimation was sent to the Family Welfare Department late by the Legal Department.

6. It is in the above background of the matter, the present appeal is taken up for final hearing.

7. Mr. Paresh Upadhyay, learned advocate appearing for the appellant has submitted that the claim of the appellant was already accepted by the Government and, therefore, question of provision under which the appellant was entitled for the claim did not arise. Only question was the quantum of amount which could have been explained by the Government only, and therefore, petition should not have been rejected even without issuing notice to the other side. He has further submitted that even if it is assumed that there was inability on the part of the advocate for the petitioner to put the case as expected by the Court, the learned Assistant Government Pleader for the other side, whose presence was also recorded by the Court, could have been asked the same thing which was not done and it is recorded that the Court is not in a position to help the senior citizen. He has, therefore, submitted that the

petition could not have been dismissed on that ground.

8. Even with regard to the merits of the matter, Mr. Upadhyay has submitted that merely because the appellant had not obtained prior permission of the concerned authority, that by itself is not a ground for rejecting the just and valid claim of the appellant. Rule 8 of Gujarat State Service (Medical Treatment) Rules, 1988 clearly provides that prior permission of the Director of Health & Medical Services can be dispensed with where delay will be dangerous to the health of the patient. For this purpose, he relied on the decision of this Court rendered in Special Civil Application No.7004 of 1998 decided on 16.10.1998. Here in the present case also, the appellant has made specific averment in the petition that the appellant had gone to his native place at Anaval, Dist. Surat where he suffered paralytic stroke on 05.10.2002 and under these circumstances, the appellant was immediately taken to Surat by the family members for medical treatment. The appellant was not in a position to take any decision whether to go for treatment and it was for the family members to take such decision and the appellant was taken to Nirmal Children

and General Hospital for his medical treatment. At the said hospital, the appellant was treated and even was operated by the Neuro Surgeon. More than once, Neuro Surgery was performed and at last, the appellant could be saved. Even if the appellant would have taken to Civil Hospital, Surat, the appellant could not have been treated there since Neuro Surgery could not have been performed there. At the relevant point of time, no such facility was available at Civil Hospital, Surat. Considering these averments in the petition, we are of the view that the appellant had a right to take steps in self preservation.

9. Mr. Upadhyay has further relied on the decision of this Court in the case of Bharatkumar H. Pathak V/s. State of Gujarat, (2003) 2 G.H.J. 994 wherein this Curt has taken the view that considering the facts and circumstances of the case and the reply filed by the respondent, the Treasury Office has wrongly rejected the bill or returned bill to the respondent No. 4 with such clarification to produce a reference and or recommendation letter by the Government employee from the headquarter government Hospital. The Court further held that as

per the procedure prescribed under Rule 8, the Government employee may not be able to comply with such requirement and accordingly, direction was issued to the respondent No. 4 to send the entire medical bill to the respondent No. 3 and the petition was allowed.

10. Considering the entire facts and circumstances of the case and pleadings of the parties and the decided case law on the subject and more particularly, submissions made by Ms. Rita Divetiya, the Principal Secretary, Health & Family Welfare Department that wherever there is a case of emergency, prior sanction is not required and that there is discrimination in any class of employee, we are of the view that the appellant's case is also a case of emergency and in that view of the matter, prior sanction ought to have been dispensed with by the respondent authorities and the appellant's case should not have been rejected on that ground. We, therefore, allow this appeal and direct the respondent authorities to accord sanction to the entire bill of the appellant and issue cheque of Rs.91,730/- in favour of appellant's wife. As per the submission made before this Court, we direct the respondent authorities to issue cheque of Rs.45,000/-

in favour of appellant's wife namely, Padmaben Natbvarlal Desai within one week from today and a cheque for the remaining amount of Rs.46,730/- be issued in her favour within three weeks thereafter. It is made clear that if the amount as stated above is not paid within the above time frame, the respondent authorities are liable to pay interest on the outstanding amount @ 12% p.a. and that amount will have to be borne by the person responsible for such default, out of his or her own pocket.

11. With the aforesaid directions and observations, this appeal is allowed. The impugned judgment and order of the Learned Single Judge is hereby quashed and set aside. Rule is made absolute with no order as to costs.

[A. M. KAPADIA, J.]

[K. A. PUJ, J.]

Savariya